

State of California



Fair Political Practices Commission

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Statements of Economic Interest
322-6444

March 15, 1985

Robert K. Rogers, Jr.
City Attorney
City of So. San Francisco
P.O. Box 711
So. San Francisco, CA 94083

Re: Your Request for Advice
Our File No. A-85-026

Dear Mr. Rogers:

Thank you for your letter on behalf of Councilmembers Addiego and Teglia requesting advice concerning the application of the conflict of interest provisions of the Political Reform Act to a particular factual situation.^{1/} You included with your letter a copy of an opinion you wrote for the City Council on the matter, a map of the City, and portions of a consultant's report on the proposed Magnolia Senior Center/Senior Housing Project ("Magnolia Project").

QUESTIONS

1. Does Councilmember Addiego have a financial interest in decisions relating to the Magnolia Project within the meaning of Section 87103 based on his ownership of rental property at 631 and 633 Grand Avenue?

2. Does Councilmember Teglia have a financial interest in decisions relating to the Magnolia Project within the meaning of Section 87103 based on her ownership of rental property one-half block away from the Project?

^{1/} The Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code.

FACTUAL BACKGROUND

1. Councilmembers' Economic Interests

a. Councilmember Addiego

Councilmember Addiego owns a total of ten residential rental units located in two buildings at 631 and 633 Grand Avenue and receives rental income from them.

b. Councilmember Teglia

Councilmember Teglia owns a total of nine residential units (apartments) located at 567-569 Baden Avenue and a single-family residential unit at 553 Baden Avenue and receives rental income from them.

2. Pending City Council Decisions

The decisions before the City Council relate to various proposals for the use of an abandoned school site. The main proposal is to renovate the school building into a senior citizens center. An ancillary proposal is to promote the use of the adjacent school property as a senior center housing project with approximately 150 units. The City Council has already given concept approval to these proposals, jointly called the Magnolia Senior Center/Senior Housing Project ("Magnolia Project"). Future decisions include zoning decisions and project approvals.

DISCUSSION

As you know, the Political Reform Act prohibits a public official from making, participating in, or attempting to influence a governmental decision in which the official has a financial interest. Section 87100. "Financial interest" is defined as a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

Accordingly, since Councilmembers Addiego and Teglia have interests in, and receive income from, real property, they must refrain from any Council decisions which could materially affect those interests.

The neighborhood surrounding the proposed Magnolia Project is mixed residential. Both of the Councilmembers' properties are located close to the proposed Magnolia Project site. Although Councilmember Teglia's property is closer than Councilmember Addiego's property, it appears that the effects of the Magnolia Project will be the same on all of the surrounding residential property in view of the size of the Project.

As you noted in your Opinion for the Council (attached to your request for advice), it is reasonably foreseeable that the completion of the proposed Magnolia Project will have some effects on the surrounding properties, and the issue here is whether these effects will be material. By regulation, the Commission adopted the following monetary guidelines for determining the materiality of a decision's effect on real property:

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars (\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

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(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or

2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000);
or

2 Cal. Adm. Code Section
18702(b)(2).

In addition to these monetary guidelines, 2 Cal. Adm. Code Section 18702(a) provides that a "significant" effect on an economic interest is considered material. With respect to residential property, this has been interpreted to mean that a significant effect on the value, use or enjoyment of real property is material.

In the present situation, it does not appear that the Magnolia Project will have significant effects on the character of the immediate neighborhood; a senior center seems to be as compatible with a residential neighborhood as a school. In addition, the senior housing component of the Magnolia Project also seems compatible with a neighborhood where there is already a mix of single family and multiple family dwellings. Although there may be some increased traffic or noise, it seems that this will be minimal if the property is devoted solely to use by senior citizens.

In your analysis and during our telephone discussions, we also discussed the possibility that this Project will affect the rental housing market of which the Councilmembers' properties are a part. It appears from the facts you were able to obtain that this Project will have a small effect, if any, on the rental housing market. It does not seem, based on these facts, that this Project will affect either the market rents in the area or the demand for rental units. These facts include:

- Vacancy factors in South San Francisco residential units were 2.77% in 1982, 1.92% in 1983, and 1.31% in 1984.

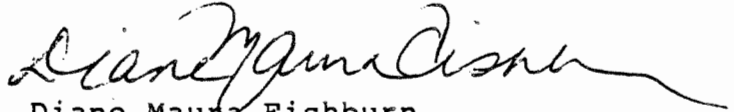
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- In 1982-1984, there were extremely few residential rental unit starts.
- The need for new housing is high since the growth in employment is anticipated to be very high.

Based on all of the foregoing, it is our conclusion that the reasonably foreseeable effects of the Council decisions on the Magnolia Project on both of the Councilmembers' properties are not material. Therefore, they need not disqualify themselves from making or participating in these decisions.

If I can be of further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,



Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh



Feb 5 2 37 PM '85

February 4, 1985

OFFICE OF THE
CITY ATTORNEY

State of California
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Attn: Barbara Milman, Esq.
Chief Counsel, Legal Division

Re: Request for Advice Letter

Dear Ms. Milman:

This letter requests that your division issue an advice letter to me regarding whether or not two councilmembers are disqualified from voting on matters related to a proposed renovation of a school building to a senior center and the use of adjacent school property for a senior housing project. The initial concept approval of this project came before the City Council at its regular meeting of January 23, 1985.

Inasmuch as I was requested to render an opinion regarding whether or not the councilmembers could vote on matters related to the senior housing project and there was not sufficient time prior to the council meeting to obtain a written letter opinion from your division, I researched the matter and rendered the attached written opinion dated January 25, 1985. While working on the written opinion, I consulted by telephone with Attorney Diane Fishburn of your staff. She was helpful in pointing out areas of potential concern for the FPPC and in focusing the issues to be addressed in the memorandum.

I believe that most of the relevant facts necessary for your staff to render a written opinion on this subject are contained in my memorandum, the documents attached to that memorandum which are referred to by page number therein and an aerial photograph which shows the geographic location of the real property holdings of the two councilmembers whose interests are the subject of this question. It may also assist you to better understand my opinion if I point out that in rendering an opinion I also considered the following formal FPPC opinions: (1) No. 76-089 of April 6, 1977, 3 FPPC Opinions 38, (2) No. 76-005 of June 2, 1976, 2 FPPC Opinions 77 and (3) No. 78-009 of November 7, 1978, 4 FPPC Opinions 62.

If I have not included enough information in this letter for you to issue an advice letter on the subject, please contact me at your earliest convenience so that I may supplement the information you already have. It is anticipated that in addition to the concept approval already rendered by the City Council there

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will be future zoning decisions and/or project approvals required by the City Council related to the senior center renovation project and the senior housing project. It would be helpful if we could receive a response from your division within the next thirty to forty days.

Your cooperation and assistance in this matter is greatly appreciated.

Very truly yours,



Robert K. Rogers, Jr.
City Attorney

RKR/ep
Attachment